

## HOT FUN (?) IN THE SUMMERTIME

Beneficial ownership, prepaid access, and more AML issues to keep us busy

\* \* \*

I am sure that Sly and the Family Stone weren't focused on AML challenges when they released this late 1960s hit. Given the 100-plus degree temps in Washington, D.C. (and the continuous brutal heat in places like Dallas), it would be easy to focus only on the weather.

But we know AML takes no vacation. So what is keeping us occupied (or should be) this summer?

Besides the complete lack of true bipartisanship in our nation's capital, several issues warrant our attention.

Latest word from Financial Action Task Force

First, the Financial Action Task Force has been extremely busy, with the release of its Second Public Consultation (PDF) as well as typologies on the laundering of proceeds of corruption and human trafficking.

A brief reminder is in order. FATF decisions are not binding on financial institutions. But they do impact how our governments both view their current AML regimes and how other jurisdictions view us. For example, the United States has been seen as weak on beneficial ownership laws and regulations, so the government has been working to change the landscape.

In this FATF paper, the public is told:

"It is not proposed to change the FATF Recommendations on beneficial ownership, but the FATF has sought to clarify what countries and financial institutions are expected to do to implement the requirements; and the types of measures which could be used to ensure beneficial ownership information is available."

Given that the U.S. will seek to make adjustments based on FATF recommendations, financial institutions should review this document and provide input to their trade associations.

As for the typologies, they are always good training tools.

AML related legislation that the industry could support

A second matter to watch is, believe it or not, congressional interest in something other than disagreement.

Confirming my point above that countries such as the U.S. take FATF criticisms seriously, actual bipartisan legislation (from Senators Carl Levin, a Michigan Democrat, and Senator Charles Grassley, an Iowa Republican) has just been introduced.

The bill, not yet numbered as I wrote this blog, would "end the practice of the 50 States forming corporations for unidentified persons, and instead require the States to obtain the identities of the persons behind the corporations."

The Incorporation Transparency and Law Enforcement Assistance Act has been introduced in previous congresses. But with the pressure of continuous FATF criticism and the strong support of many law enforcement organizations, the chances of success may increase. [Learn more here.](#)

Improving information gathering without punishing financial institutions that have no clear way to discern beneficial ownership is worth a strong lobbying effort by financial institutions. As Senator Levin points out, it takes more information to open a bank account than to form a U.S. corporation.

That needs to change.

The Obama Administration also mentioned this issue in its July release of a "Strategy to Combat Transnational Organized Crime," released by the National Security Council. A number of priorities impact the financial sector, so you should review the document. Of particular interest is a directive to provide incentives to the private sector to help stop the increase of these creative criminals.

The security agency also looks at cybercrime, so-called kleptocrats, and even suggests declassifying data be made available to the private sector.

Another Sly song "Stand" says "Stand for the things you know are right."

Good advice for both the private and public sector to join together and work to pass positive legislation.

"Prepaid Access"--a new term and regulation.

Throughout the past decade there has been a continuous debate on how new product technologies can be used to move illicit proceeds. What was once called "stored value" is now "prepaid access," with a new FinCEN rule (PDF) released at the end of July.

Among other things, the sellers of so-called prepaid access devices will be required to have AML programs under certain circumstances. FinCEN says that the rule addresses regulatory gaps and greatly assists law enforcement.

We will see if that is true. Suffice it to say that all AML officials should review the entire rule during the next six months, before compliance is required.

### Director Mueller's term finally extended

Since I mentioned it last blog, I am happy to report that the Senate came to its senses (at least on this issue) and unanimously voted to extend FBI Director Robert Mueller's term for two more years.

With all the activity going on and the anniversary of 9/11 upon us, it is good that we will not be going through a transition at this important agency.

### Final words

Are we really having "Hot Fun in the Summertime"?

No, it is hot and we are in the summer. But there is a lot to follow and much to do.

Here's hoping that the AML community can take some time off before Labor Day.

- About John Byrne, CAMS

- Byrne is Executive Vice-President of the Association of Certified Anti-Money Laundering Specialists (ACAMS). He has written extensively on AML issues for 25 years and has appeared on television and testified before many congressional committees on AML-related policy issues. Prior to joining ACAMS, John was the Global Regulatory Relations Executive at Bank of America. Previous to that, he worked for the American Bankers Association for 22 years and was responsible for ABA's lobbying, regulatory, and educational efforts on money laundering, and other compliance issues. He received the ABA's Distinguished Services Award and was also the first private sector recipient of the "Director's Medal for Exceptional Service" from the Treasury Department's Financial Crimes Enforcement Network (FinCEN). Byrne can be e-mailed at [jbyrne@acams.org](mailto:jbyrne@acams.org).